

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

FELIX WALLS,

Petitioner,

Case No. 06-CV-12441-DT

v.

HONORABLE DENISE PAGE HOOD

UNITED STATES OF AMERICA,
ROBERT H. CLELAND, MICHAEL LEIBSON,
and UNITED STATES MARSHALS,

Respondents.

ORDER RE POST-JUDGMENT MOTIONS

On June 30, 2006, the Court issued its Opinion and Order denying Petitioner's habeas claim and entering Judgment in favor of Respondents. On July 28, 2006, Petitioner filed a document entitled, "Petitioner's Habeas Corpus Petition Pursuant to the Original habeas Corpus, Refiled Without Prejudice, and Request for Dismissal of Indictment and Conviction and Request for Declaratory Judgment" and a "Petitioner's Emergency Motion to Stay Sentencing." Petitioner mailed and served the documents from the Wayne County Jail on July 25, 2006. The Court considers the post-judgment motions under Rule 59(e) of the Rules of Civil Procedure since a Judgment has been entered in this matter and, also under E.D. Mich. LR 7.1 governing Motions for Reconsideration.

A motion filed after a judgment has been entered is correctly considered as either a motion for new trial or motion to alter or amend judgment under Fed.R.Civ.P. 59. *Feathers v. Chevron U.S.A., Inc.*, 141 F.3d 264, 268 (6th Cir. 1998). Rule 59(e) allows a party to file a Motion to Alter or Amend Judgment within a ten-day time period of the entry of the Judgment. The ten day time period cannot be extended by the district court if the motion is filed after a judgment has been

entered. Fed.R.Civ.P. 6(b); *Peake v. First National Bank and Trust Co. of Marquette*, 717 F.2d 1016, 1019 (6th Cir. 1983). The ten day time limit is jurisdictional and may not be altered or waived. *Feathers*, 141 F.3d at 268. A Rule 59 motion filed outside the mandatory ten day window is of no effect. *Id.*

The Local Rules of the Eastern District of Michigan provide that any motion for reconsideration shall be served not later than ten days after entry of such order. E.D. Mich. LR 7.1(g)(1). No response to the motion and no oral argument thereon shall be allowed unless the Court, after filing of the motion, otherwise directs. E.D. Mich. LR 7.1(g)(2). Local Rule 7.1(g) further states:

(3) **Grounds.** Generally, and without restricting the discretion of the Court, motions for rehearing or reconsideration which merely present the same issues ruled upon by the Court, either expressly or by reasonable implication, shall not be granted. The movant shall not only demonstrate a palpable defect by which the Court and the parties have been misled but also show that a different disposition of the case must result from a correction thereof.

E.D. Mich. LR 7.1(g)(3).

Petitioner's motions were not timely filed either under Rule 59 or the Local Rules. The Court does not have jurisdiction to consider Petitioner's motions. The Court notes that it also has no jurisdiction over Petitioner's sentencing since the criminal matter is not before the undersigned. The criminal matter is before the Honorable Robert H. Cleland, Case No. 92-CR-80236.

Accordingly,

IT IS ORDERED that Petitioner's Habeas Corpus Petition Pursuant to the Original Habeas Corpus, Refiled Without Prejudice, and Request for Dismissal of Indictment and Conviction and Request for Declaratory Judgment (**Docket No. 8, filed July 28, 2006**) is DENIED.

IT IS FURTHER ORDERED that Petitioner's Emergency Motion to Stay Sentencing

(Docket No. 7, filed July 28, 2006) is DENIED.

/s/ DENISE PAGE HOOD

DENISE PAGE HOOD

United States District Judge

DATED: July 31, 2006

I hereby certify that a copy of the foregoing document was served upon counsel of record on July 31, 2006, by electronic and/or ordinary mail.

s/William F. Lewis

Case Manager